

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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94-129

CC Docket No. 99-129

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

**NOTIFICATION OF ELECTION
TO ADMINISTER FCC RULES
BY THE
PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF KENTUCKY**

* * * * *

In an Order released May 3, 2000, The Federal Communications Commission (hereinafter "FCC"), modified its rules regarding the illegal trade practice in the telecommunications industry commonly known as "slamming". According to this decision and the amended rules, the utility regulatory bodies of each state may administer complaints from consumers alleging that a long distance carrier switched the consumer's provider without the consumer's authorization. In order to administer the complaints, the utility regulatory body of each state must file with the Commission notice of the agency's intent to administer these consumer complaints. This document is the notice of the Public Service Commission of the Commonwealth of Kentucky (hereinafter "PSC" or "Commission") that it will administer these complaints in accordance with the FCC's rules.

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1. Complaints: The PSC addresses consumer complaints both formally and informally.¹

A. To place an informal complaint, the consumer must contact the PSC in writing at the following address: Public Service Commission, Division of Consumer Services, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602; (502) 564-3940.²

B. To place a formal complaint, the consumer must file a typewritten, one-sided, double-spaced document at the foregoing address. The complaint must contain the following information: full name and address of consumer and alleged violator; a factual description of the alleged violation; references to the legal basis for the alleged violation; a request for specific relief; and signature of the consumer, if proceeding *pro se*, or his or her attorney of record.³

2. Filing fees: There are no filing fees required.

3. Documentation: There is no specific requirement that the consumer provide documentation in support of his or her complaint. As set forth previously, however, the consumer must provide a detailed factual basis for the alleged violation. The consumer may supply additional information, including documentation, at his or her discretion.

4. Procedures: The PSC will address each complaint in the following manner:

¹ 807 Ky. Admin. Regs. 5:001 § 12 & 13 (2000).

² 807 Ky. Admin. Regs. 5:001 § 3 & 13 (2000).

³ 807 Ky. Admin. Regs. 5:001 § 3 (2000).

A. Informal complaints: After a consumer contacts the PSC regarding his or her complaint, a member of the Division of Consumer Services will contact the defendant carrier by letter requesting information regarding the alleged violations, such as a letter of authorization or a recording of the customer's verbal authorization.⁴ The carrier may respond to the consumer's allegations at that time. If the carrier does not respond to this letter, a second letter will follow the first within 14 days. The Division of Consumer Services will attempt to resolve the issue informally. If the consumer and the carrier cannot resolve the matter at this stage, the consumer may proceed by filing a formal complaint.⁵ The Commission will comply with the requirements of federal law and regulation regarding absolution and ordering payments to authorized carriers and consumers.

B. Formal Complaints: The PSC will examine the complaint to determine if it establishes a prima facie case and conforms to the administrative regulations. If the PSC determines the complaint does establish a prima facie case, the PSC will inform the defendant by order that it must satisfy the consumer's complaint or file an answer.⁶ The Commission will comply with the requirements of federal law and regulation regarding absolution and ordering payments to authorized carriers and consumers.

C. Adjudication of complaints: Regarding informal complaints, the PSC will work with both parties to attempt to reach a fair resolution of the matter through correspondence and informal conferences. Regarding formal complaints, the

⁴ Ky. Rev. Stats. Ann. § 278.535(2) (Michie/Bobbs-Merrill 1998).

matter will be set for hearing before the Commissioners or a designated hearing officer. At that hearing, the Commissioners or hearing officer will hear evidence through live testimony or deposition, and a reporter shall prepare a complete transcript of the hearing.⁷ Based upon this evidence, the Commissioners or hearing officer will determine if the defendant switched the consumer's carrier without the consumer's permission.⁸ If "slamming" has occurred, the Commission will then impose the remedies required by both the federal rules and regulations and Kentucky law.⁹

5. Deadlines: There are no deadlines shorter than those required by the federal rules.

6. Safeguards of procedural fairness: The PSC has jurisdiction over the rates and services of all utilities that operate in the Commonwealth of Kentucky.¹⁰ Included in its jurisdiction is the authority to regulate, among other things, rates, services and unreasonable practices such as "slamming".¹¹ The PSC may itself initiate proceedings and investigations of possible violations by utilities.¹² In hearings, the PSC is the trier of fact with authority to determine the weight of the evidence and credibility of the witnesses.¹³ Every party to a hearing has the right to counsel¹⁴ and cross-examination of witnesses.¹⁵ Thus, the PSC acts as an independent trier of fact that weighs all

⁵ 807 Ky. Admin. Regs. 5:001 § 13(3) (2000).

⁶ 807 Ky. Admin. Regs. 5:001 § 12(4)-(6) (2000).

⁷ Ky. Rev. Stat. Ann. §§ 278.310-360 (Michie/Bobbs-Merrill 1998).

⁸ Ky. Rev. Stat. Ann. § 278.535 (Michie/Bobbs-Merrill 1998).

⁹ Ky. Rev. Stat. Ann. §§ 278.535(6) & 278.990(1) (Michie/Bobbs-Merrill 1998).

¹⁰ Ky. Rev. Stat. Ann. § 278.040 (Michie/Bobbs-Merrill 1998).

¹¹ Ky. Rev. Stat. Ann. §§ 278.030, 278.260, 278.270 & 278.535 (Michie/Bobbs-Merrill 1998).

¹² Ky. Rev. Stat. Ann. § 278.280 (Michie/Bobbs-Merrill 1998).

¹³ South Central Bell Tele. v. Public Serv. Comm'n, 702 S.W.2d 447, 451 (Ky. Ct. App. 1986).

¹⁴ See 807 Ky. Admin. Regs. 5:001 § 3(4) & (7).

¹⁵ 807 Ky. Admin. Regs. 5:001 § (6).

evidence produced by either party through direct testimony or cross-examination. Finally, the PSC has adopted extensive rules regarding its procedures.¹⁶ Clearly the procedural due process of each party to any Commission proceeding is adequately protected.

7. Right to appeal: Parties aggrieved by a Commission decision have two (2) options: (1) to request a rehearing by the Commission or (2) to appeal to the Franklin County Circuit Court.¹⁷ The options, however, are not mutually exclusive. After a party requests a rehearing, the PSC will grant or deny the request. If granted, another hearing is held at which a party may produce additional evidence. The Commission may modify, amend, vacate or affirm its previous order. If the request for rehearing is denied, the party may appeal the administrative decision to the Franklin County Circuit Court. A party may appeal the Franklin Circuit Court's decision to the Court of Appeals. If a party loses at the Court of Appeals, it may petition the Kentucky Supreme Court for review of the decision.

¹⁶ 807 Ky. Admin. Regs. 5:001.

¹⁷ Ky. Rev. Stat. Ann. §§ 278.400 & 410 (Michie/Bobbs-Merrill 1998).

Public Service Commission
Commonwealth of Kentucky
Notice of Election to Administer FCC Rules

CC Docket No. 99-129

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Deborah T. Eversole", is written over a horizontal line.

DEBORAH T. EVERSOLE
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This the 4th day of August, 2000.